

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1975/2020

Ashish Haribhau Sontakke,
aged 22 years, Occ. Unemployed,
r/o Gulmohar Colony, Chandur (Railway),
District Amravati. **.....PETITIONER**

...V E R S U S...

Central Reserve Police Force,
through its Procurement Officer
and member Recruitment Board,
having his office at DIG Office,
CRPF Camp, Hingna Road,
Nagpur. **...RESPONDENT**

AND

WRIT PETITION NO.249/2021

Yogesh Bhaskar Neware,
aged 25 years, Occ. Unemployed,
r/o Masola at Post Masola, Tq.
Dist. Yavatmal, Maharashtra **.....PETITIONER**

...V E R S U S...

Central Reserve Police Force,
through its Procurement Officer
and member Recruitment Board,
having his office at DIG Office,
CRPF Camp, Hingna Road,
Nagpur. **...RESPONDENT**

Mr. N. B. Rathod, Advocate for petitioners.
Mr. S. A. Chaudhari, Standing Counsel for respondent.
Mrs. M. R. Chandurkar, Advocate for intervenor.

CORAM:- ROHIT B. DEO & ANIL L. PANSARE, JJ.
DATED :- 18.08.2022

JUDGMENT (Per: Anil L. Pansare, J.)

Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties.

2. The question involved in both these petitions is in respect of recruitment of the petitioners for the post of Constable, through Staff Selection Commission (SCC) in the year 2018.

3. The respondent is Central Reserve Police Force (CRPF), acting through Procurement Officer and Member of the Recruitment Board, having office at DIG Office, CRPF Camp, Hingna Road, Nagpur. The petitioners have applied for the post from the Other Backward Classes (OBC) category. The petitioners belong to Gowari tribe. On 14.04.2018, the coordinate Bench of this Court in Writ Petition No.4032/2009; *Adim Gowari Samaj Vs. State of*

Maharashtra; has held that Gowari tribe is covered under the Constitution (Scheduled Tribes) Order, 1950. In view of the finding rendered by the Bombay High Court, the petitioners, who were otherwise belonging to the OBC category, were transposed to the category of Scheduled Tribes (ST). The petitioners; Ashish Sontakke and Yogesh Neware, accordingly, obtained the Tribe certificates on 30.08.2019 and 08.03.2019 from the competent authorities viz. Sub Divisional Officer, Chandur Railway and Yavatmal, respectively and submitted before the respondent. Unfortunately, the aforesaid change in the social status did not go well with the petitioners, particularly petitioner in Writ Petition No.249/2021.

4. We will first deal with the case of the petitioner in Writ Petition No.249/2021. The respondent by adopting a very technical approach, held that the petitioner having applied from the OBC category and having failed to submit caste certificate to that effect (though Tribe certificate was submitted), would be required to be treated from the General

category in terms of the so called guidelines of the respondent. Treating the petitioner from the General category, who was otherwise qualified and had succeeded in the fitness test, was disqualified on the ground of over age. Accordingly, vide impugned order dated 19.02.2020, the petitioner was declared disqualified in documents verification.

5. Mr. Rathod, learned counsel for the petitioner, has vehemently submitted that the petitioner cannot be blamed for the change in his social status. The petitioner's status as belonging to the OBC category has been transposed to the ST category because of the order passed by the High Court. It is nobody's case that the petitioner has filed false certificate while applying for the post and that subsequently, during the course of the documents verification, has furnished the certificate as belonging to the ST category.

6. As against, Mr. Chaudhari, learned counsel for the respondent, submits that the respondent can also be not

blamed. The respondent acted strictly in terms of the advertisement published for the common recruitment of CAPS for the year 2018. The petitioner had mentioned his caste/category as 'OBC' in online Staff Selection Commission application but at the time of documents verification, he has produced the certificate as belonging to ST category. Therefore, the respondent was left with no other choice but to treat the petitioner from the General category, as per the guidelines of the SCC. Accordingly, he was found to be overage and hence was disqualified during the documents verification.

7. As stated earlier, this approach appears to us to be too technical to disqualify the petitioner. Learned counsel for the petitioner is absolutely right in contending that no fault can be attributed to the petitioner. His caste remains as Gowari. Prior to the finding rendered by the High Court in the case of *Adim Gowari Samaj* (supra), the said caste was in the OBC category. Pursuant to the aforesaid order, the Gowari community has been treated as belonging to ST. The

order passed by the Bombay High Court was assailed before the Supreme Court in Civil Appeal No. 4096/2020; the *State of Maharashtra and anr. .vs. Keshao Vishwnath Sonone and anr.*, with other connected matters. On 18.12.2020, the Hon'ble Supreme Court was pleased to set aside the order, meaning thereby that the persons belonging to Gowari community would now be treated as belonging to the OBCs. Thus, the petitioner can now be said to be belonging to the OBC category.

8. Be that as it may, the fact remains that the petitioner has applied for the post of Constable as belonging to the OBC category. The Tribe certificate has been issued in terms of the order passed by the Bombay High Court and therefore the petitioner was left with no other alternative but to submit the tribe certificate at the time of documents verification. In such circumstances, the respondent ought to have extended the benefits to the petitioner as belonging to the ST category. The age relaxation to the OBC category is three years and that of the ST category is five years. The

petitioner would have qualified if treated under either of the categories except the General category.

9. The respondent does not dispute that the Tribe certificate has been granted to the petitioner pursuant to the order of the Bombay High Court. The respondent further does not dispute that at the time of filing the application, Gowari caste was included in the OBC category. In the circumstances, the approach of the respondent in treating the petitioner as a candidate belonging to the General category is unsustainable. The order impugned, therefore, is liable to be set aside, insofar as Writ Petition No.249/2020 is concerned.

10. We are, therefore, inclined to relegate the petitioner in Writ Petition No.249/2021 to the respondent to consider his case afresh from the stage of documents verification.

11. As regards petitioner in Writ Petition No.1975/2020, he is not entitled to any relief, for the reason

that even if the benefit of the social status is granted to him, he failed in the physical test. His height and chest were measured as 169.5 cm. and 76.81 cm. respectively as against the criteria of measurement of height - 170 cm. and chest - 80/5 cm. for the OBC category. In that sense, even if the status of the OBC category is conferred upon the petitioner, he stood disqualified in the physical test. However, learned counsel for the petitioner submits that benefit of ST category ought to be given to the petitioner, for whom the criteria was 162.5 cm. for height and 76/5 cm. for chest.

12. In support of aforesaid contentions, learned counsel for the petitioner has relied upon the findings recorded in paragraphs 100 and 101 of the judgment passed by the Hon'ble Supreme Court in the case of the *State of Maharashtra and anr. .vs. Keshao Vishwnath Sonone and anr.* (supra), which read thus:

“100. Now, we come to the last submission of Shri Rohtagi. Shri Rohtagi submits that Scheduled Tribe Certificate to the members of ‘Gowari’ community was granted after the judgment of the High Court dated

14.08.2018, on the basis of which certificates large number of students have taken admission in different educational institutions taking benefit of Scheduled Tribes as well as employment at various places as Scheduled Tribes candidates which need to be protected by this Court. After the declaration granted by the High Court, the authorities proceeded to grant Scheduled Tribe certificate to the 'Gowari' community and it is true that on strength of such Scheduled Tribe certificate, several students must have taken admission in different courses as Scheduled Tribe candidate and persons have also secured employment as Scheduled Tribe candidate. The State of Maharashtra has belatedly filed these appeals which delay in filing these appeals have already been condoned by us and there being no interim orders in these appeals staying the effect of judgment of the High Court, grant of Scheduled Tribe certificate was natural consequence of the judgment of High Court.

101. We in the ends of justice directs that the admission taken and employment secured by the members of 'Gowari' community on the basis of Scheduled Tribe certificate granted to them between 14.08.2018 till date shall not be affected by this judgment and they shall be allowed to retain the

benefit of Scheduled Tribe obtained by them. However, the above Scheduled Tribe candidates shall not be entitled to any further benefit as Scheduled Tribe except their initial admission in different courses or employment at different places on the strength of Scheduled Tribe certificate given to the 'Gowari' Community obtained between 14.08.2018 and this day."

13. As can be seen, the benefit has been extended to the candidates who were granted admissions and/or employments on the strength of the Tribe category certificate given to the Gowari community between the period from 14.08.2018 to 18.12.2020. Admittedly, the petitioner is not given any employment and therefore cannot get benefit of the said relaxation. The petition, as regards the petitioner in Writ Petition No. 1975/2020, is thus liable to be dismissed.

14. In the result, we proceed to pass the following order.

(a) Writ Petition No.249/2021 is partly allowed.

(i) The impugned order dated 19.02.2020 is quashed and set aside.

(ii) The petitioner is relegated back to the respondent for consideration of his claim afresh from the stage of documents verification. Since the substantial period has passed from the date of passing of the impugned order till today and considering the nature of post applied for, the respondent is at liberty to conduct physical test again granting all benefits as are available to the person as belonging to the OBC category. The criteria of age will however be extended beyond the relaxation available to the OBC category.

(iii) The process be completed, as expeditiously as possible, and in any case on or before 30.11.2022.

(iv) The petitioner shall appear before the respondent on 05.09.2022 at 11.00 a.m. and thereafter as directed.

Rule is made absolute in the above terms.
No order as to costs.

(b) Writ Petition No.1975/2020 is dismissed.
Rule is discharged. No order as to costs.

(Anil L. Pansare, J.)

(Rohit B. Deo, J.)